

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FELTON A. SPEARS, JR. and SIDNEY
SCHOLL, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

FIRST AMERICAN EAPPRAISEIT (a/k/a
eAppraiseIt, LLC), a Delaware limited liability
company,

Defendant.

Case No. C-08-00868-RMW

SCHEDULING ORDER

On October 18, 2013, the court held a case management conference in response to a request by plaintiff Felton Spears. *See* Dkt. No. 334. The primary issue discussed at the conference was whether to extend discovery to allow Spears to complete discovery from Chase, a third party to the lawsuit.¹ Spears requested a 90-day extension of fact discovery and all other deadlines to allow Chase to complete production of a sample of 450 funded loan files.² He claims that this extension is necessary and appropriate because Chase has been unable to produce the requested discovery in time to meet the October 15, 2013 close of fact discovery deadline. Defendant EA opposes this

¹ At issue in the lawsuit is defendant First American eAppraiseIT's appraisals for Washington Mutual, which JP Morgan Chase acquired.

² Spears proposes that the additional discovery to confirm class member status of the remaining 230,000 properties EA appraised for WaMu can continue as it is not needed until the claims process or the second stage of the trial after liability issues are determined.

1 proposal arguing that Spears has had plenty of time to complete discovery and the reason he has not
2 timely completed discovery is his own lack of diligence in promptly seeking this information from
3 Chase.

4 The court finds some merit in both arguments. The court's deadlines are necessary for the
5 fair and efficient resolution of disputes and the court does not change them lightly. Nevertheless,
6 the court is sympathetic to Spears' difficulty in compelling a third party to produce a large volume
7 of critical documents that are apparently not readily available. Therefore, the court will extend the
8 deadline as to the discovery from Chase until December 22, 2013, and extend some other dates to
9 insure that defendant is not unfairly limited in its time to prepare its defense in response to
10 additional analysis by plaintiffs of files produced by Chase. Spears will have to make his case with
11 whatever information he can obtain by December 22, 2013.

12 Fact discovery remains closed as to all other matters except those, which the parties have
13 previously agreed could extend beyond the October 15, 2013 deadline.³ The court also recognizes
14 that there are a number of motions to compel before the magistrate and leaves those issues to the
15 magistrate's sound discretion to resolve and compel the discovery sought by the motions, if
16 appropriate.

17 Defendant argues that the court should require a noticed motion before considering
18 plaintiffs' request for a modification of the last stipulated scheduling order. The court is satisfied
19 that it has enough information justifying the amendment set forth below without requiring additional
20 paperwork. However, the court does agree with defendant that plaintiff must file a noticed motion
21 before the court will consider any request to "bi-furcate [sic] the issues for trial such that liability
22 issues be tried by the court at a date set by the court at this time, and that the issues related to
23 statutory damages and class membership for the Class at large . . . be addressed at a later time if
24 Plaintiffs are successful in establishing liability." Dkt. No. 342 at 21.

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28 ³ EA stated in the case management statement that it did not oppose Spears' request for a limited
extension of fact discovery for the deposition of Cheryl Feltgen. The parties may also complete any
other limited discovery that they have agreed could be completed after the deadline.

Accordingly, the court resets the deadlines in this case as follows:

Event	Prior Deadline per August 30, 2013 Stipulation	New Deadline
Merits Discovery Cutoff	October 15, 2013	October 15, 2013 (except for discovery from Chase) December 22, 2013 (discovery from Chase)
Expert Reports	November 15, 2013	January 31, 2014
Supplemental and Rebuttal Expert Reports	April 14, 2014	May 14, 2014 (for plaintiffs) June 6, 2014 (for defendant)
Expert Discovery Cut-Off (including any discovery relating to or arising from plaintiff's' aggregate inflation analysis)	Unclear as to whether the date set by the August 30, 2013 stipulation is June 30, 2014 or whether that is the mediation date	June 30, 2014
Mediation	See above	July 16, 2014
Dispositive Motion Hearing Cut-Off	July 18, 2014	July 25, 2014
Other Motion Hearing Cut-Off (other than motions <i>in limine</i>)	August 15, 2014	August 22, 2014
Pretrial Conference (hearing on motions <i>in limine</i> , agreed jury instructions and verdict forms, proposed <i>voir dire</i> questions)	October 6, 2014	October 9, 2014
Pretrial Briefs	October 30, 2014	October 30, 2014
Trial Date	November 24, 2014	November 24, 2014

Dated: November 6, 2013


 Ronald M. Whyte
 United States District Judge